



Australian Government

Department of Education, Employment and Workplace Relations

Australian Government Employment Bargaining Framework

*Supporting Guidance
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Australian Government Employment Bargaining Framework

PART 1 – Workplace Relations Policy

Workplace arrangements should:

- 1.1 set out Senior Executive Service (SES) and equivalent employees' terms and conditions in either:
 - (a) determinations issued under the employing legislation (where available) or individual common law arrangements; or
 - (b) where the majority of SES officers choose, in an enterprise agreement.
- 1.2 set out non-SES employees' terms and conditions in enterprise agreements whose coverage excludes SES employees, except for the following limited cases:
 - (a) small Agencies where the SES and non-SES have uniform functions and conditions; or
 - (b) defined specialist SES in non-managerial positions.

All workplace arrangements (including enterprise agreements, common law arrangements, determinations issued under the employing legislation, and workplace policies and practices) are to:

- 1.3 comply with all relevant legislative requirements;
- 1.4 ensure an employee's right to representation is respected, including in agreement making;
- 1.5 facilitate collective bargaining in good faith with employees and their representatives;
- 1.6 ensure employees' terms and conditions are set out in clear, easy to read streamlined instruments;
- 1.7 obtain Ministerial approval of proposed collective terms and conditions prior to finalising negotiations and putting to staff for consideration;
- 1.8 apply the right of entry and freedom of association provisions contained in the Fair Work Act in a fair and reasonable manner; and
- 1.9 include procedures which facilitate the resolution of disputes.

PART 2 – Remuneration Policy

Improvements in pay and conditions are to be linked to improvements in productivity:

- 2.1 improvements in remuneration are to be offset by genuine quantifiable productivity initiatives;
- 2.2 salary advancement for individuals within classifications and broadbands is subject to at least satisfactory performance; and
- 2.3 remuneration increases are to apply prospectively, other than in exceptional circumstances.

PART 3 – Funding Policy

- 3.1 Improvements in pay and conditions are to be funded from within existing budgets, without leaching of program funding.

PART 4 – Staffing Policy

All workplace arrangements (including enterprise agreements, determinations issued under the employing legislation, common law arrangements and workplace policies and practices) are to:

- 4.1 incorporate flexible attraction and retention initiatives, including incorporating terms and conditions which assist employees in maintaining a healthy work-life balance; and
- 4.2 incorporate leave policies and employment practices that support the release of community service volunteers for emergency services duties and Defence Reservists for peacetime training and deployment.

In addition, APS workplace arrangements must also comply with the following:

- 4.3 maintaining structures that are consistent with the APS Classification Rules;
- 4.4 ensuring portability of accrued paid leave entitlements; and
- 4.5 include compulsory redeployment, reduction and retrenchment provisions, without enhancing existing redundancy arrangements other than where required by legislation.

Introduction

The Australian Government Employment Bargaining Framework

The Australian Government Employment Bargaining Framework ('Bargaining Framework') sets out Australian Government policy as it applies to workplace relations arrangements in Australian Government employment. It provides a framework for the management of workplace relations in Australian Government employment consistent with both the broader principles of Australian Government workplace relations policy, and legislative requirements.

The Bargaining Framework balances the workplace interests of the Australian Government with those of Australian Government employees.

The aim of the Bargaining Framework is to implement the Government's workplace relations policy with respect to Australian Government employment, namely to:

- ensure fairness and flexibility;
- promote productivity;
- provide for sustainable and affordable remuneration arrangements;
- provide for enterprise agreements, negotiated at the individual Agency level, as the principal means of setting terms and conditions of employment for non-Senior Executive Service level employees; and
- enshrine accountability for compliance with the Bargaining Framework with individual Agencies and the relevant Portfolio Minister.

From time to time, the Department of Education, Employment and Workplace Relations (DEEWR) will issue Workplace Relations Advices (WR Advices) to provide information regarding relevant aspects of workplace relations policy and legislation. WR Advices can be found on the www.workplace.gov.au website under 'Federal Government'.

This document provides guidance for Agencies on the implementation of the Bargaining Framework when making workplace agreements and other workplace arrangements with their employees. It is not a definitive guide to all aspects of the Government's workplace relations policy or federal workplace relations legislation.

This September 2009 edition of the Supporting Guidance replaces the earlier edition dated February 2008.

Application of the Bargaining Framework

Australian Government policy is for the Bargaining Framework to apply to enterprise agreements, determinations made under section 24(1) of the *Public Service Act 1999* or other relevant employing legislation (determinations) and common law agreements. Agencies will also ensure that workplace policies and practices are consistent with the Bargaining Framework.

APS Agencies

The Australian Government requires all Australian Public Service (APS) Agencies and the Members of Parliament Staff employment arrangements to comply with the relevant sections of the Bargaining Framework.

Non APS Commonwealth Authorities and other Government employers

Non-APS Commonwealth Authorities and other Australian Government employers should apply the Bargaining Framework as directed by their responsible Minister. Where the responsible Minister does not have the power to direct a non-APS Commonwealth Authority to apply the Bargaining Framework, those Authorities are encouraged to voluntarily apply the Bargaining Framework.

This Bargaining Framework does not apply to Government Business Enterprises or the Australian Defence Force. However, Government Business Enterprises are encouraged to apply the Government's workplace relations policy.

Types of workplace arrangements

Enterprise agreement

An enterprise agreement as defined in the *Fair Work Act 2009* (Fair Work Act).

Determination

A determination made by an authorised office holder under the relevant employing legislation (such as section 24(1) of the *Public Service Act 1999*) which sets out terms and conditions. A determination may apply to an individual employee or a group of employees.

Common law agreement

For the purposes of the Bargaining Framework, a common law agreement should be a written agreement made between an Agency and another party, generally, an employee of that Agency.

Definitions of key terms are provided at page 42.

Stakeholders in the Bargaining Framework

Agency Heads

Agency Heads are responsible for the application of the Bargaining Framework within their respective organisations.

Each Agency Head will:

- ensure that all workplace arrangements are consistent with the Bargaining Framework and Australian Government policy;
- engage in good faith with employees and their representatives in negotiating enterprise agreements and making other workplace arrangements;
- advise the Agency Minister of any significant proposed workplace relations initiatives prior to implementation; and
- advise the Agency Minister, the Minister for Employment and Workplace Relations and DEEWR, of any workplace matters (potential or actual) which could significantly affect delivery of services and any proposed response.

With respect to enterprise agreements, each Agency Head will:

- seek their Agency Minister's in-principle agreement to proposed bargaining position, including on the Average Annualised Wage Increase (AAWI), in relation to each new enterprise agreement prior to entering negotiations;
- issue a Notice of Employee Representational Rights to their employees at the commencement of bargaining, consistent with the Fair Work Act;
- negotiate an enterprise agreement with their non SES employees (and SES employees where applicable) consistent with the Bargaining Framework and the requirements of the Fair Work Act;
- with effect from 1 September 2009, not enter into enterprise agreements covering APS employees which have a nominal expiry date (NED) later than 30 June 2011;
- provide regular updates on bargaining to DEEWR;
- seek DEEWR's views on potential disputes prior to initiating Fair Work Australia proceedings or seeking legal advice;
- ensure the terms of a proposed enterprise agreement are provided to DEEWR for assessment for consistency with the Bargaining Framework prior to seeking Ministerial approval;
- ensure Ministerial approval on the terms of a proposed enterprise agreement is obtained before final approval of the agreement is obtained from employees;
- ensure any inconsistencies between the terms of a proposed enterprise agreement and Bargaining Framework are either:
 - (i) rectified prior to the Agency Head seeking the approval of the Agency Minister to offer the Workplace Arrangement to staff; or
 - (ii) drawn to the Agency Minister's attention when requesting the approval of the Minister to proceed;
- advise DEEWR if an enterprise agreement containing inconsistencies with the Bargaining Framework is approved by the Agency Minister; and
- provide DEEWR with a copy of the enterprise agreement following final approval from staff.

With respect to a determination which applies to a group of employees, Agency Heads will follow their obligations with respect to enterprise agreements.

- An exception to this requirement is where a determination is necessary solely to preserve pre-existing terms and conditions immediately following machinery of government change, in conjunction with the machinery of government protections and regulations under the *Public Service Act 1999* and *Public Service Regulations 1999*.

Agency Heads will ensure that any individual arrangements, including determinations or common law agreements, are consistent with the Bargaining Framework and Australian Government policy.

Agency Heads will also ensure that relevant data and other information on the application of the Bargaining Framework within their agency is provided to DEEWR both regularly and from time to time as requested. Such information may include, but is not limited to:

- provision of information on the number and terms of individual flexibility arrangements;
- orders made by Fair Work Australia in respect of the agency;
- documents required under the Fair Work Act, such as the notice of employee representation rights issued by the agency; and
- information on the operation and use of provisions in a workplace arrangement such as cashing out of annual leave clauses or maternity leave at half pay.

Employees

Employees are responsible for providing feedback to Agencies on terms and conditions of employment and approving enterprise agreements.

Employee bargaining representatives will follow the good faith bargaining rules as set out in the Fair Work Act when negotiating enterprise agreements.

Agency/Authority Minister

The Agency or Authority Minister is responsible for the application of the Bargaining Framework.

Agency or Authority Ministers will:

- either approve or reject a proposed enterprise agreement, having taken account of all relevant information, including the Bargaining Framework and DEEWR's Bargaining Framework assessment;
- either approve or reject a proposed determination applying to more than one employee, except where the determination is to give effect to a Machinery of Government change;
- not approve arrangements that cannot be funded from the Agency or Authority's existing Budget allocation, or which require the leaching of program funding to support improvements to terms and conditions;
- ensure that all workplace arrangements are consistent with the Bargaining Framework and Australian Government policy;

- write to the Minister for Employment and Workplace Relations if they, as Agency or Authority Minister, have agreed to approve an arrangement which is inconsistent with the Bargaining Framework, advising the reasons for that decision; and
- with effect from 1 September 2009, not approve enterprise agreements covering APS employees which have a nominal expiry date (NED) later than 30 June 2011.
 - In exceptional circumstances, APS agencies can seek the approval of their relevant Minister, the Minister for Employment and Workplace Relations and the Minister for Finance and Deregulation to provide a nominal expiry date beyond 30 June 2011. Any APS agency wishing to pursue this option should seek advice from DEEWR.

Department of Education, Employment and Workplace Relations (DEEWR)

DEEWR is responsible for the application of the Bargaining Framework.

DEEWR will:

- publish and maintain the Bargaining Framework in accordance with Government policy;
- provide all APS Agencies and Authorities with information and advice on workplace relations policy, legislation, and the application and interpretation of the Bargaining Framework through various means, including the issuing of WR Advices;
- coordinate assessments of workplace arrangements by the Australian Public Service Commission (APSC) and the Department of Finance and Deregulation (Finance);
- provide APS Agencies, and Authorities where applicable, with written advice on whether a proposed enterprise agreement or determination is consistent with the Bargaining Framework;
- provide preliminary informal advice on early drafts of a proposed enterprise agreement, when requested to do so;
- provide advice on whether a workplace arrangement complies with the Bargaining Framework;
- provide information, advice and recommendations on workplace arrangements which represent current best practice across the APS and are designed to improve the operation and administration of workplace arrangements in Australian Government employment;
- provide information and advice to Agencies and Authorities on specific workplace relations matters, including consistency of workplace arrangements with the Bargaining Framework, where the Agency or Authority requests;
- provide mediation services to agencies to assist in resolving disputes upon request and where appropriate;
- report to Government, both regularly and upon request from time to time, on the application of the Bargaining Framework and other workplace arrangements applying in Australian Government employment; and
- monitor decisions made by Fair Work Australia on matters of interest such as good faith bargaining and advise agencies of any relevant implications.

Australian Public Service Commission (APSC)

The role of the APSC is to promote good practice across the APS and assist Agencies and their employees in working in accordance with the APS Values.

The APSC will:

- provide advice to DEEWR on the consistency of an Agency's workplace arrangements, policies and practices with the Bargaining Framework in relation to adherence to Redeployment, Retrenchment and Redundancy provisions, the *Public Service Act 1999* (PS Act) and relevant subordinate legislation.

Department of Finance and Deregulation (Finance)

The role of Finance is to assess the affordability of APS agreements with proposed wage outcomes in excess of an AAWI of 3 per cent.

Finance will:

- examine proposed increases to remuneration and an agency's financial position to determine whether affordability parameters are met, as required; and
- provide advice to DEEWR and the agency on the affordability of a proposed enterprise agreement as required as part of the assessment process.

Fair Work Australia and the Fair Work Ombudsman

Fair Work Australia and the Fair Work Ombudsman do not have a direct role in the application of the Bargaining Framework.

However, under the Fair Work Act, Fair Work Australia performs a number of functions relevant to agreement making. These functions include approving enterprise agreements, overseeing right of entry and industrial action, dealing with disputes, and providing assistance and advice about its functions and activities.

Similarly, the Fair Work Ombudsman is responsible for monitoring compliance and investigating breaches of the Fair Work Act and fair work instruments, and providing education, assistance and advice to employees, employers and organisations on the application of legislation and other general workplace relations enquiries.

DEEWR Assessments

Introduction

As set out above, DEEWR is responsible for providing advice on Australian Government workplace relations policy, the application of the Bargaining Framework and assessing enterprise agreements for compliance with the Bargaining Framework.

Agencies are encouraged to seek information and advice from DEEWR on these matters when required.

Assessment of an enterprise agreement or applicable collective determination

Agencies subject to the Bargaining Framework are required to submit enterprise agreements and collective determinations, where applicable, to DEEWR for assessment prior to the Agency seeking final employee approval of the terms of the agreement. This requirement applies to both new enterprise agreements and collective determinations, and any proposed variations to existing collective instruments.

DEEWR will assess the enterprise agreement or collective determination and provide a written assessment to the Agency Head.

Agencies are strongly encouraged to contact their DEEWR client contact team to discuss the development of any enterprise agreement or collective determination and the Bargaining Framework before an agreement is finalised.

DEEWR can provide, on request, preliminary assessments of proposed collective workplace arrangements to assist Agencies to identify any potential inconsistencies with the Bargaining Framework at an early stage.

Where an enterprise agreement or collective determination has been provided to DEEWR for assessment DEEWR will discuss all identified inconsistencies with the Agency's nominee prior to finalising the written assessment.

A written assessment will generally be provided within 10 working days of DEEWR receiving all relevant information, unless DEEWR and the Agency otherwise agree.

Where an enterprise agreement or collective determination is significantly amended or altered following DEEWR's written assessment (other than to amend any inconsistencies raised in the assessment), including amendments to the total remuneration provided in the agreement or the nominal expiry date, the agreement must be resubmitted to DEEWR for assessment.

Assessment of Individual Arrangements

Agency Heads are responsible for ensuring that individual arrangements, including individual flexibility agreements, common law agreements and determinations, are

consistent with the Bargaining Framework and the Government's workplace relations policy.

Agency Heads may request DEEWR to assess individual arrangements for consistency with the Bargaining Framework, however formal assessment is not required under the Bargaining Framework.

DEEWR is available to provide advice to Agencies about individual arrangements which relate to the Bargaining Framework or the Government's workplace relations policy where an Agency requests.

Assessment of Policies and Practices

Agency Heads are responsible for ensuring that their workplace policies and practices are consistent with the Bargaining Framework, relevant legislation, and the Government's workplace relations policy.

Agency Heads may request DEEWR assess workplace policies and practices for consistency with the Bargaining Framework, however formal assessment of policies and practices is not required under the Bargaining Framework.

DEEWR is also available to provide advice to Agencies about policies and practices which relate to the Bargaining Framework or the Government's workplace relations policy where an Agency requests.

Part 1 – Workplace Relations Policy

Workplace arrangements should:

- 1.1 set out Senior Executive Service (SES) and equivalent employees' terms and conditions in either:
 - (a) determinations issued under the employing legislation (where available) or individual common law arrangements; or
 - (b) where the majority of SES officers choose, in an enterprise agreement.
- 1.2 set out non-SES employees' terms and conditions in enterprise agreements whose coverage excludes SES employees, except for the following limited cases:
 - (a) small Agencies where the SES and non-SES have uniform functions and conditions; or
 - (b) defined specialist SES in non-managerial positions.

All workplace arrangements (including enterprise agreements, common law arrangements, determinations issued under the employing legislation, and workplace policies and practices) are to:

- 1.3 comply with all relevant legislative requirements;
- 1.4 ensure an employee's right to representation is respected, including in agreement making;
- 1.5 facilitate collective bargaining in good faith with employees and their representatives;
- 1.6 ensure employees' terms and conditions are set out in clear, easy to read streamlined instruments;
- 1.7 obtain Ministerial approval of proposed collective terms and conditions prior to finalising negotiations and putting to staff for consideration; and
- 1.8 apply the right of entry and freedom of association provisions contained in the Fair Work Act in a fair and reasonable manner; and
- 1.9 include procedures which facilitate the resolution of disputes.

1.1 Senior Executive Service (SES) Terms and Conditions

- 1.1.1 It is Australian Government policy that the terms and conditions for SES employees and their equivalents be reflected in either:
 - determinations;
 - individual common law arrangements; or
 - where a majority of SES officers in an Agency choose, an enterprise agreement.

SES enterprise agreement option

- 1.1.2 Given the different nature of the duties of SES and non SES employees, where a majority of affected SES level employees choose to negotiate an enterprise agreement, it is Government policy that a separate enterprise agreement for SES level employees be negotiated.
- 1.1.3 A ‘majority of SES officers’ means either 50 per cent plus one of affected SES employees in the Agency (or relevant business function where the Agency chooses to implement separate enterprise agreements) or, if a vote is conducted, a majority of affected SES employees in the Agency who vote.
- 1.1.4 An ‘affected SES employee’ means an SES employee who may be covered by the enterprise agreement during its nominal duration.
- 1.1.5 It is Government policy that a separate enterprise agreement will be made between and Agency and SES employees under this option in all cases other than the following:
- (a) small Agencies where SES and non-SES level employees have uniform or highly similar functions and conditions; or
 - (b) defined specialist SES employees in non-managerial positions.
- 1.1.6 Agencies considering a single enterprise agreement applicable to both SES and non-SES employees are encouraged to consult with DEEWR about the application of these exceptions.

SES individual arrangement options

- 1.1.7 Where no applicable enterprise agreement is in place in an Agency, SES employees’ terms and conditions of employment will remain subject to all applicable minimum standards contained in a relevant award (such as the *APS Award 1998*) and relevant legislation.
- 1.1.8 Agencies should be conscious that determinations and common law agreements may be more limited in their operation than enterprise agreements (for instance, they must comply in every respect with the conditions of an applicable award other than where an exemption for high income earners applies, whereas a enterprise agreement can, subject to the Better Off Overall Test¹, alter those conditions).
- 1.1.9 When using common law agreements, APS Agencies must include provisions which:
- mirror the protections afforded APS employees who are subject to machinery of government transfers by s.72 of the PS Act (in circumstances where an Agency is moved outside the APS, a common law agreement will cease to apply, and those protections would not be maintained);

¹ *The Better Off Overall Test (BOOT) will apply from 1 January 2010. The No-Disadvantage Test (NDT) will continue to apply until 31 December 2009. Pending modernisation of public sector enterprise awards, the APS Award 1998 and other unmodernised awards will apply for the purposes of the NDT and the BOOT.*

- allow the common law agreement to be overridden by a s.24(3) determination subsequently issued by the Public Service Minister; and
- include dispute resolution arrangements.

1.1.10 Agencies should note that Fair Work Australia has no capacity to hear and determine disputes in relation to common law agreements (other than in relation to a safety net contractual entitlement outlined in s.541 & 542 of the Fair Work Act). Agencies should seek advice from DEEWR about options for dispute resolution arrangements.

1.1.11 APS Agencies should note that a determination cannot be used to set salary for superannuation purposes in the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) and the Public Sector Superannuation Accumulation Plan (PSSAP) as a determination is not considered to be an 'agreement' for the purposes of those schemes. Accordingly, a determination cannot provide that an employee's salary for superannuation purposes is anything other than the default treatment of salary for superannuation purposes under the relevant scheme's rules and legislative requirements. Should an Agency and the relevant employee wish to alter the employee's salary for superannuation purposes, a separate common law agreement will be required for this purpose.

1.1.12 Further information on the use of determinations and common law agreements is available for Agencies from their DEEWR client contact team or at the 'Frequently Asked Questions' page of the 'Federal Government' section of the Australian Workplace internet site.

1.1.13 As the issues associated with determinations and common law agreements will vary on a case by case basis, Agencies are invited to contact DEEWR for further advice.

Existing SES Employees' Australian Workplace Agreements (AWA)

1.1.14 In accordance with the Government's workplace relations policy all existing workplace agreements, including Australian Workplace Agreements, will continue to operate until they are terminated or replaced in accordance with the provisions of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

1.1.15 Further information on the termination or replacement of existing workplace agreements is available for Agencies from their DEEWR client contact team or at the 'Frequently Asked Questions' page of the Australian Workplace internet site.

1.2 Non-SES employees' Terms and Conditions

1.2.1 It is Australian Government policy that terms and conditions for non-SES employees be negotiated separately at each agency in an enterprise agreement made under the Fair Work Act.

1.2.2 Existing workplace agreements, made under previous legislation, will continue to operate until terminated or replaced. However, it is Australian Government policy that these agreements should be replaced by enterprise agreements made under the Fair Work Act once they have reached their Nominal Expiry Date (NED). To this

end, seeking an 'extension and variation' of an agreement made under previous legislation in place of negotiating an enterprise agreement under the Fair Work Act would be inconsistent with the Bargaining Framework.

- 1.2.3 Agencies may choose to have multiple enterprise agreements to accommodate distinct groups within the Agency where there is a clear business case for doing so. Agencies considering multiple enterprise agreements must consult with DEEWR in the first instance to determine whether the proposed arrangements are consistent with the Bargaining Framework. Agencies are not to enter into multiple collective agreements where doing so would lead to a harsh or oppressive result for the employees concerned, or for the purposes of providing inferior terms and conditions to any group of employees.
- 1.2.4 For non-SES employees, a determination or a common law agreement is not a satisfactory alternative to an enterprise agreement to set terms and conditions in the medium to long term. However, it may be necessary for interim periods of up to twelve months to use a determination or common law agreements to set terms and conditions of employment while an enterprise agreement is negotiated. Agencies who consider that they would not be able to conclude negotiations for an enterprise agreement within twelve months should contact DEEWR to discuss their options.
- 1.2.5 Agencies who wish to provide for terms and conditions for employees in addition to those available under an enterprise agreement should utilise a flexibility term, as described under Part 1.6, rather than a determination or common law agreement.
- 1.2.6 Further information on the use of determinations and common law agreements is available for Agencies from their DEEWR client contact team or at the 'Frequently Asked Questions' page of the 'Federal Government' section of the Australian Workplace internet site.

Existing Non-SES Employees' AWAs

- 1.2.7 In accordance with the Government's workplace relations policy, all existing workplace agreements, including Australian Workplace Agreements, continue to operate until they are terminated or replaced in accordance with the Fair Work Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* as appropriate.
- 1.2.8 Further information on the termination or replacement of existing workplace agreements is available for Agencies from their DEEWR client contact team or at the 'Frequently Asked Questions' page of the 'Federal Government' section of the Australian Workplace internet site.

1.3 Compliance with all relevant legislative requirements

- 1.3.1 All workplace arrangements must comply with all relevant legislative requirements. Key legislation affecting Australian Government employment includes the:
- *Fair Work Act 2009*;
 - *Fair Work (Transitional and Consequential Amendments) Act 2009*;

- *Long Service Leave (Commonwealth Employees) Act 1976*;
- *Maternity Leave (Commonwealth Employees) Act 1973*;
- *Equal Employment Opportunity (Commonwealth Authorities) Act 1987*; and
- *Privacy Act 1988*.

1.3.2 In addition to the above, agencies may also be subject to other relevant employing legislation such as the *Public Service Act 1999*, *Parliamentary Service Act 1999*, or agency-specific legislation in certain cases.

Unlawful terms

1.3.3 Under the Fair Work Act, agreements must not contain unlawful terms. A term of an enterprise agreement will be an unlawful term if it:

- is a discriminatory term;
- is an objectionable term;
- would be inconsistent with the unfair dismissal provisions of the Fair Work Act;
- would be inconsistent with the industrial action provisions of the Fair Work Act;
- would be inconsistent with the right of entry provisions of the Fair Work Act; or
- would result in an exercise of State or Territory occupational health and safety rights in a way that is inconsistent with the right of entry provisions.

1.3.4 Matters which do not pertain to the employer-employee relationship or employer-union relationship cannot be enforced in an agreement, and protected industrial action during bargaining cannot be taken in relation to such a matter. DEEWR can provide guidance on which matters do not pertain to the employer-employee or employer-union relationship.

1.3.5 DEEWR will endeavour to identify potential non compliance with legislative requirements during formal assessments of enterprise agreements and where an Agency has requested assessment of other workplace arrangements.

1.3.6 Where DEEWR identifies inconsistencies during its assessment of enterprise agreements, Agencies will ensure that the inconsistency is immediately rectified.

1.4 Ensuring an employee's right to representation is respected, including in agreement making

1.4.1 The Fair Work Act enshrines the right of employees to be represented and provides that every employee is free to decide whether or not to join and be represented by a union in the workplace, including in bargaining.

1.4.2 It is unlawful for anyone to try to stop an employee exercising this choice by threats, pressure, discrimination or victimisation.

1.4.3 An individual employee's choice to be represented must be respected by all parties in the workplace. Where an employee elects to be a member of a union, their Agency must respect the employee's right to deal on workplace matters through their representative.

- 1.4.4 Employees have the right to seek advice, assistance and representation from their union in the workplace. Workplace delegates will be able to represent their colleagues in the workplace.
- 1.4.5 It is Government policy that Agencies should facilitate employee access to their representatives, including unions, in the workplace in a fair and reasonable way. This includes the provision of information to employees by their representatives.
- 1.4.6 The Government expects that all arrangements will take into account the specific circumstances of an Agency and will not prejudice the efficient operation of, or service provision by, the Agency.
- 1.4.7 In consultation with unions, agencies should develop a framework, similar to that provided at Attachment A which outlines responsibilities and obligations in relation to delegates' rights within the workplace.

Notice of employee representational rights

- 1.4.8 At the commencement of bargaining, employees must be provided with a notice of employee representational rights as detailed at s.174 of the Fair Work Act. This notice must be provided as soon as practicable, and not later than 14 days, after the notification time for the agreement. In the context of Australian Government employment, the notification time will generally be the time where the agency agrees to bargain, or initiates bargaining, for the agreement.
- 1.4.9 The prescribed notice can be found at Attachment B. Agencies should note that the prescribed notice cannot be amended other than as provided for in the notice.
- 1.4.10 This notice specifies that the employee may appoint a bargaining representative to represent the employee:
- (a) in bargaining for the agreement; and
 - (b) in a matter before Fair Work Australia that relates to bargaining for the agreement.
- 1.4.11 The notice also explains that:
- (a) if the employee is a member of an employee organisation that is entitled to represent the industrial interests of the employee in relation to work that will be performed under the agreement; and
 - (b) the employee does not appoint another person as his or her bargaining representative for the agreement;
- the organisation will be the bargaining representative of the employee.

1.4.12 The notice must also explain the effect of clause 178(2)(a) of the Fair Work Act (which deals with giving a copy of an instrument of appointment of a bargaining representative to an employee's employer).

1.4.13 Agencies should provide DEEWR with a copy of the notice of employee representational rights given to employees at the time it is distributed, and advise DEEWR of the composition of bargaining units as soon as practicable.

Bargaining representatives

1.4.14 Under the Fair Work Act, an employee can appoint a bargaining representative for a proposed enterprise agreement. Where an employee is a member of a union, that union will be taken to be their bargaining representative unless the employee appoints another person or revokes the status of the union as their representative.

1.4.15 As with other employers under the Fair Work Act, Agencies are not permitted to seek control of, or influence over, the appointment of bargaining representatives. Agencies should also note that under the Fair Work Regulations, a bargaining representative of an employee must be free from control by the employee's employer or another bargaining representative, and free from improper influence from the employee's employer or another bargaining representative.

1.4.16 There is no limit to the number of bargaining representatives who may take part in negotiations for a new enterprise agreement. However, in cases where the bargaining process is not proceeding efficiently or fairly because there are multiple bargaining representatives (s.229(4)(a)(ii) of the Fair Work Act), Fair Work Australia may make a bargaining order. Agencies considering applications for such an order must consult with DEEWR in the first instance.

Model consultation clause

1.4.17 The Fair Work Regulations contain a model consultation clause, which is provided at Attachment C. Enterprise agreements and collective determinations should use the model consultation clause without modification unless there are exceptional circumstances supporting the use of another clause. Agencies wishing to use a consultation clause other than the model clause must seek approval from DEEWR before proceeding.

1.5 Facilitating collective bargaining in good faith with employees and their representatives

1.5.1 It is Australian Government policy that Agencies will bargain with their employees in good faith.

1.5.2 Agencies will observe the right of employees to appoint their own bargaining representatives to represent them in bargaining for a proposed enterprise agreement. If employees are union members and the union is entitled to represent the industrial interests of the employees in relation to their work, then agencies will recognise the unions as the bargaining representatives for those employees.

- 1.5.3 Chapter 2, Part 2-4, Divisions 3 and 8 of the Fair Work Act provide the legislative framework for appointing bargaining representatives and negotiating with bargaining representatives, including defining good faith bargaining.
- 1.5.4 The principles of good faith bargaining apply to all bargaining representatives (defined in the Fair Work Act as employers, employee organisations – provided an employee is a member and union can represent their industrial interests, and any other person appointed as a bargaining representative by an employee or employer).
- 1.5.5 If a bargaining representative considers that negotiations are not proceeding in good faith, a bargaining representative may refer the matter to Fair Work Australia. In determining matters related to good faith bargaining, Fair Work Australia may, on application by a bargaining representative, make a bargaining order or a serious breach declaration directing the parties to undertake certain courses of action as it sees fit.
- 1.5.6 Agencies considering referring a good faith bargaining matter to Fair Work Australia are to consult with DEEWR before any referral or request is made. Other bargaining representatives are also encouraged to do so.
- 1.5.7 Good faith bargaining includes:
- (a) attending, and participating in, meetings at reasonable times;
 - (b) disclosing relevant information (other than confidential or commercially sensitive information) in a timely manner;
 - (c) responding to proposals made by other bargaining representatives for the agreement in a timely manner;
 - (d) giving genuine consideration to the proposals of other bargaining representatives for the agreement, and giving reasons for the bargaining representative's responses to those proposals;
 - (e) refraining from capricious or unfair conduct that undermines freedom of association or collective bargaining; and
 - (f) recognising and bargaining with other bargaining representatives for the agreement.
- 1.5.8 Good faith bargaining requirements do not require:
- (a) a bargaining representative to make concessions during bargaining for the agreement; or
 - (b) a bargaining representative to reach agreement on the terms that are to be included in the agreement.
- 1.5.9 In addition to the obligation to provide DEEWR with a copy of the notice of employee representational rights at the time it is distributed, and advise DEEWR of the composition of bargaining units as soon as practicable, Agencies must also advise DEEWR that they have commenced bargaining and provide periodic updates as to the status of the bargaining process.
- 1.5.10 Agency Heads will genuinely consult with employees and their representatives in relation to other workplace arrangements.

1.6 *Ensuring employees' terms and conditions are set out in clear, easy to read streamlined instruments*

- 1.6.1 Enterprise agreements may include as much or as little detail as agreed between Agencies and their employees, subject to satisfying the requirements of the Fair Work Act.
- 1.6.2 The terms of enterprise agreements should facilitate ongoing productivity initiatives and the capacity to meet changing and evolving business needs in a fair and reasonable manner.
- 1.6.3 The Fair Work Act requires enterprise agreements to include a flexibility term. The flexibility term must set out the terms of the enterprise agreement which may be varied by an individual flexibility arrangement agreed to under the flexibility term. It must also require the employer to ensure that any individual flexibility arrangement agreed to is about permitted matters only, and must not include a term that would be an unlawful term in an enterprise agreement.
- 1.6.4 The Fair Work Regulations contains a model flexibility term, which is provided at Attachment D. Enterprise agreements should use the model flexibility term without modification unless there are exceptional circumstances supporting the use of another clause. Agencies wishing to use a flexibility clause other than the model clause must seek approval from DEEWR before proceeding.
- 1.6.5 While either an individual or a group of employees can initiate discussions on the use of a flexibility term, it is important to note that flexibility terms are only to be applied in relation to individual employees.
- 1.6.6 Other collective arrangements in Australian Government employment, such as collective determinations made under the *Public Service Act 1999* (or other similar Agency-specific legislation) should include a flexibility term on the same basis as those required in enterprise agreements under the Fair Work Act.
- 1.6.7 Consistent with the requirements of the Fair Work Act, under these flexibility arrangements, an employee and employer may agree to trade off certain terms and conditions of employment as specified under the flexibility term in the agency's enterprise agreement and subject to legislative requirement (excluding, as a matter of government policy, personal leave entitlements) so long as they are better off overall under the resulting arrangement.
- 1.6.8 Agencies should note that flexibility terms cannot result in terms and conditions which undercut legislated minima. For instance, it would not be permissible for an agency to provide less than the minimum entitlement to annual leave in exchange for additional remuneration.
- 1.6.9 An Agency is not to coerce an employee into entering into a flexibility arrangement.
- 1.6.10 It is expected that use of flexibility terms will be the sole mechanism for providing additional or different terms and conditions to individual employees. Accordingly, agencies should not continue to use individual determinations or supplementary

common law agreements other than in exceptional circumstances. Where an agency considers that exceptional circumstances exist, DEEWR must be consulted before any action is taken.

1.6.11 Agencies are required to provide DEEWR with details on the number and terms of individual flexibility arrangements entered into, as requested from time to time.

1.7 Requirement to obtain Ministerial approval

1.7.1 It is a requirement that Ministerial approval of the terms of an enterprise agreement or determination is obtained prior to the enterprise agreement being formally approved by employees or the collective determination is made.

1.7.2 In addition, Agencies should seek in-principle approval from the Agency Minister of a proposed bargaining position, including proposed salary increases, and should inform the Agency Minister where significant issues arise during the course of negotiations.

1.7.3 When seeking Ministerial approval, an Agency must inform the Agency Minister of:

- the findings of the DEEWR assessment against the Bargaining Framework; and
- the financial implications of the proposed agreement or determination.

1.8 Application of the right of entry and freedom of association provisions of the Fair Work Act in a fair and reasonable manner

1.8.1 The role of workplace representatives, including union delegates and employee representatives, is to be respected and facilitated.

1.8.2 It is the Government's expectation that Agencies and employee representatives, including unions, will work together collaboratively and professionally.

1.8.3 Agencies are encouraged to enter into discussions with employees and their representatives in order to facilitate arrangements for workplace representatives that take into account the Agency and the employee representatives' specific needs.

1.8.4 The Government recognises the legitimate role played by unions in the workplace, including the rights and obligations provided for under legislation. The Government recognises the legitimate role of unions to act on behalf of their members and for the benefit of workers and to organise and bargain collectively.

1.8.5 In accordance with longstanding practice, Agencies are to provide the facility for an employee to have their union membership fees deducted from their pay upon the request of the employee.

1.8.6 To enable the best possible representation of employees and to enhance more productive relationships and working arrangements within an Agency, union delegates and/or employee representatives may require training in workplace relations matters including occupational health and safety matters.

- 1.8.7 Reasonable access to training is to be facilitated. This may, for example, include training during work time if that does not prejudice the efficient operation of, or service provision by, the Agency.
- 1.8.8 Agencies and unions will comply with the terms of the Fair Work Act, including with respect to right of entry.
- 1.8.9 It is recommended that each Agency develops, in consultation with employee representatives, a timely process to resolve issues arising from these arrangements.
- 1.8.10 To enable proper representation and communication Agencies will provide specified areas for the display of union information outside public contact areas.

1.9 Procedures which facilitate the resolution of disputes

- 1.9.1 Under the *Fair Work Act 2009*, all enterprise agreements must contain a procedure that allows Fair Work Australia, or another person who is independent of the employers, employees, or employee organisations covered by the Agreement, to settle disputes. In addition, it is Australian Government policy that all workplace arrangements in Australian Government employment must include procedures which facilitate the resolution of disputes in the workplace level in the first instance.
- 1.9.2 Only in cases where a dispute cannot be resolved through workplace-based processes should it be referred to an external party for assistance with resolution.
- 1.9.3 Where a dispute cannot be resolved at the workplace level and requires external assistance, dispute resolution arrangements should provide for initial external assistance to take the form of mediation or conciliation. Should the parties to the agreement wish to provide for arbitration in their dispute resolution arrangements, it should only be as the final avenue for resolution following exhaustion of all other options.
- 1.9.4 It is Government policy that the resolution of disputes in Australian Government employment should occur in good faith and therefore follow the same principles as the good faith bargaining requirements detailed at s.228 of the Fair Work Act (as referred to at Part 1.5 above).
- 1.9.5 The Fair Work Regulations contain a model clause for dispute resolution which meets the requirements outlined above, which is provided at Attachment E. Enterprise agreements and collective determinations should use the model dispute resolution clause without modification unless there are exceptional circumstances supporting the use of another clause. Agencies wishing to use a dispute resolution clause other than the model clause must seek approval from DEEWR before proceeding.

Industrial disputes and related matters

- 1.9.6 Agencies should inform their Minister and DEEWR at the earliest possible time where industrial action, either protected or unprotected, is being engaged in, threatened, impending, or probable.

1.9.7 Agencies should also inform their Minister, the Minister for Employment and Workplace Relations and DEEWR at the earliest possible time where they become involved in matters before Fair Work Australia or in any court matter that is of a workplace relations nature.

DEEWR assistance in dispute mediation

1.9.8 DEEWR may be able to assist in the mediation of disputes at the request of an agency where circumstances warrant external assistance. Agencies wishing to utilise this option are encouraged to contact DEEWR to discuss options for assistance.

Part 2 – Remuneration Policy

Improvements in pay and conditions are to be linked to improvements in productivity:

- 2.1 improvements in remuneration are to be offset by genuine quantifiable productivity initiatives;
- 2.2 salary advancement for individuals within classifications and broadbands is subject to at least satisfactory performance; and
- 2.3 remuneration increases are to apply prospectively, other than in exceptional circumstances.

2.1 Improvements in remuneration are to be offset by genuine quantifiable productivity initiatives

- 2.1.1 The Australian Government requires improved remuneration and conditions for Australian Government employees to be underpinned by improved productivity and performance.

APS

- 2.1.2 From 1 September 2009, APS agencies proposing new or varied enterprise agreements which have an AAWI in excess of 3.0 per cent (as calculated by DEEWR) will be subject to enhanced scrutiny by DEEWR in relation to productivity improvements, and by Finance in relation to affordability.
- 2.1.3 APS agencies in this category are required to provide DEEWR with sufficient documentation to ensure that productivity improvements underpinning the proposed salary increases are measurable, provable and deliverable. This may include (but is not limited to):
- the estimated cost of the agreement and its component parts;
 - savings from the underpinning productivity changes in total and from individual initiatives; and
 - workplace relations arrangements and/or initiatives which underpin the productivity initiatives.
- 2.1.4 Agencies should be aware that DEEWR will seek further information and advice regarding the productivity initiatives underpinning the proposed improvements to salary and conditions where the information in the agreement or advice provided by the agency is considered insufficient. Assessments under the Bargaining Framework cannot be finalised until this process is complete.
- 2.1.5 Agencies proposing new or varied enterprise agreements which have an AAWI of 3.0% or less (as calculated by DEEWR) will not be required to provide detailed productivity estimates to DEEWR for review. However, agencies will ensure that they are able to demonstrate, to their Minister's satisfaction, that proposed improvements to the terms and conditions of employment for Agency employees are underpinned by quantifiable productivity initiatives.

- 2.1.6 Irrespective of the proposed AAWI, APS Agencies must complete the template declaration at Attachment F.
- 2.1.7 DEEWR may also, from time to time, request information from agencies regarding the progress of their implementation of underpinning productivity initiatives during the life of an enterprise agreement.

Non-APS

- 2.1.8 Non-APS agencies are not required to provide detailed productivity estimates to DEEWR for review. However, agencies will ensure that they are able to demonstrate, to their Minister's satisfaction, that proposed improvements to the terms and conditions of employment for Agency employees are underpinned by quantifiable productivity initiatives.
- 2.1.9 For the purposes of the DEEWR assessment, non-APS Agencies will satisfy this requirement by completion of the template declaration at Attachment F.

Calculating AAWI

- 2.1.10 Should an Agency wish to estimate the AAWI arising from any proposed pay increases, the following formula applies:

$$AAWI(\%) = \frac{TotalPayIncrease(\%) \times 365}{DurationOfAgreementInDays}$$

- 2.1.11 Agencies should note that in addition to the 'across the board' annual salary increase, the calculation of AAWI by DEEWR will take into account all increases to real wages which are ongoing in nature.

2.2 *Salary advancement for individuals within classifications and broadbands is subject to at least satisfactory performance*

- 2.2.1 Salary advancement through a classification and/or broadband is only to occur where an employee's performance has been assessed at least at the satisfactory level. This does not prevent Agencies from setting additional requirements.
- 2.2.2 Agencies have the flexibility to develop performance management systems that meet the particular needs of their organisation and employees, noting that the Public Service Commissioner's Directions 1999 (Chapter 2.12) require Agencies to put in place a fair and open performance management system that:
- covers all employees;
 - guides salary movement;
 - is linked to organisational and business goals and the maintenance of the APS Values;
 - provides employees with a clear statement of performance expectations; and
 - provides employees with an opportunity to comment on those expectations.

- 2.2.3 Advancement within a broadband should also be guided by work availability and application of the merit principle.
- 2.3 *Remuneration increases are to apply prospectively, other than in exceptional circumstances***
- 2.3.1 Other than in exceptional circumstances, pay increases must only apply prospectively from the date of operation of an enterprise agreement or other Workplace Arrangement.
- 2.3.2 Should an Agency consider exceptional circumstances exist such that it is necessary to include a remuneration clause in an enterprise agreement or collective arrangement which applies retrospectively, the Agency should consult with DEEWR.
- 2.3.3 The inability of the negotiating parties to reach agreement through good faith bargaining would not be considered an exceptional circumstance.
- 2.3.4 Salary increases should not be scheduled to take effect after the proposed nominal expiry date of an enterprise agreement.
- 2.3.5 Bonus payments, including where a bonus is payable on commencement of an agreement, are increases in remuneration and, in accordance with Government policy, must be linked to improvements in productivity and performance.

Part 3 – Funding Policy

3.1 Improvements in pay and conditions are to be funded from within existing budgets, without leaching of program funding.

3.1 *Funding from within Agency budgets*

- 3.1.1 It is Australian Government policy that Agencies and Agency Ministers may not enter into arrangements which cannot be met from within existing Agency budgets.
- 3.1.2 Therefore improvements in pay and conditions will be funded from within existing Agency budget allocations for the life of an enterprise agreement or other Workplace Arrangement.
- 3.1.3 In determining appropriate remuneration levels in their workplace arrangements, Agencies should take into account any approved funding increases, including annual indexation, the application of all efficiency dividends, and the flow on costs to accrued leave entitlements.
- 3.1.4 As noted under Part 2.1, Agencies are required to provide a signed declaration covering remuneration and funding policy. The required declaration is at Attachment F.
- 3.1.5 To ensure an accurate assessment of the cost impact of workplace arrangements Agencies should seek to assess any potential increases in costs from the flexibility clause and from the implementation of any incomplete reviews of terms and conditions contained within the agreement.
- 3.1.6 Agencies may wish to use the following clause in their enterprise agreements:

From the commencement of this Agreement, a party to the Agreement or an employee whose employment is subject to the Agreement shall not pursue further claims for terms and conditions of employment that would have effect during the period of operation of this Agreement, except where consistent with the terms of this Agreement.

No leaching of program funding

- 3.1.7 Agencies are required to complete the funding declaration (at Attachment F) certifying that improvements in wages, terms and conditions have not been met by leaching program funding.
- 3.1.8 From 1 September 2009, APS agencies proposing new or varied enterprise agreements which have an AAWI in excess of 3.0 per cent (as calculated by DEEWR) will be subject to Finance scrutiny to prove that there is no leaching of program funding to fund improvements in wages, terms and conditions. Finance will assess

proposed agreements for consistency with these requirements and will advise agencies as to the information it requires on a case by case basis.

Ministerial advice

- 3.1.9 Agencies proposing new or varied enterprise agreements with an AAWI in excess of 3.0 per cent are to seek the in-principle agreement of their Minister prior to entering into negotiations. In doing so, agencies must demonstrate to their Minister's satisfaction that there are sufficient measurable, provable and deliverable productivity improvements available to support such an increase (as required under Part 2.1), and that no leaching of program funding would be required.
- 3.1.10 Consistent with the requirement that a Minister may not approve an agreement which cannot be funded from within an agency or authority's existing budget allocation, new or varied enterprise agreements proposing an AAWI in excess of 3.0% which have been found by DEEWR and/or Finance not to be supported by productivity savings or leaches funds from program funding cannot be approved by the responsible Minister.
- 3.1.11 In circumstances where the agency Minister proposes to approve an agreement with an AAWI in excess of 3%, and DEEWR and Finance agree that to support the proposed increase, productivity savings can be demonstrated and there is no leaching of program funds, both the Minister for Employment and Workplace Relations and the Minister for Finance and Deregulation must be advised.

Part 4 – Staffing Policy

All workplace arrangements (including workplace agreements, common law arrangements, determinations issued under the employing legislation, and workplace policies and practices) are to:

- 4.1 incorporate flexible attraction and retention initiatives, including incorporating terms and conditions which assist employees in maintaining a healthy work-life balance; and
- 4.2 incorporate leave policies and employment practices that support the release of community service volunteers for emergency services duties and Defence Reservists for peacetime training and deployment.

In addition, APS workplace arrangements must also comply with the following:

- 4.3 maintaining structures that are consistent with the APS Classification Rules;
- 4.4 ensuring the portability of accrued paid leave entitlements; and
- 4.5 include compulsory redeployment, reduction and retrenchment provisions, without enhancing existing redundancy arrangements other than where required by legislation.

4.1 *Flexible attraction and retention initiatives, including terms and conditions which assist employees in maintaining a healthy work-life balance*

- 4.1.1 The Government acknowledges the wide range of flexible working arrangements which exist throughout Australian Government employment to support the needs of employees and assist Agencies in attracting and retaining valuable staff.
- 4.1.2 Such arrangements include but are not limited to:
 - training support and study leave;
 - parental leave above minimum legislative entitlements;
 - flexible working hours and employee initiated part-time work;
 - ceremonial or cultural leave (including NAIDOC leave);
 - purchased leave and annual leave at half pay; and
 - career break schemes.
- 4.1.3 Nevertheless, each Agency should continue to work proactively with employees and their representatives to consider how their workplace arrangements might be used to support the needs of employees, to retain and upskill existing employees, and to assist the attraction of new employees to the APS.
- 4.1.4 It is Government policy that Agencies' enterprise agreements and other workplace arrangements should allow flexible work arrangements to be agreed between the Agency Head and employees.
- 4.1.5 The Government is committed to assisting employees to maintain a healthy work-life balance. To this end it is expected that Agencies will take into account the work-life issues facing employees in the development of their enterprise agreements and other

workplace arrangements. The cost and productivity benefits of any proposed initiatives must be taken into account when determining the overall affordability of the proposed arrangements.

Paid Parental Leave

- 4.1.6 The *Maternity Leave (Commonwealth Employees) Act 1973* (ML Act) sets out the minimum legislative entitlement to paid parental leave applicable to Australian Government employees. Agencies are able to negotiate paid parental leave above these legislative entitlements as part of the agreement making process.
- 4.1.7 Agencies should also note that the Australian Government announced in its 2009 Budget Statement the introduction of Australia's first comprehensive paid parental leave scheme, to commence on 1 January 2011. Entitlements under this scheme will operate in addition to existing legislative entitlements under the ML Act and entitlements negotiated through agreement making. The Government scheme will provide 18 weeks of payments for eligible employees at the federal minimum wage level to new parents who are the primary carers of a child born or adopted on or after 1 January 2011. To be eligible, the primary carer must be in paid work and have worked continuously for 10 of the 13 months before the expected date of birth or adoption and have completed at least 330 hours of work (the equivalent of around one full day of work each week). The scheme will cover employees, including casual employees, as well as contractors and the self employed.

Cashing out of personal/carer's leave

- 4.1.8 It is Australian Government policy not to provide for the cashing out of any personal/carer's leave. To this end, agencies should not enter into any such arrangements in their enterprise agreements, individual flexibility agreements, determinations, common law agreements, or workplace policies and practices. However, for the avoidance of doubt, agencies and employees may agree to cash out paid annual leave subject to the requirements outlined at s.93 of the Fair Work Act.

4.2 *Leave policies and employment practices that support the release of community service volunteers for emergency services and Defence Reservists for peacetime training and deployment*

- 4.2.1 The Government supports employees participating in emergency services duties and Defence Force Reserve activities.
- 4.2.2 The Australian Government therefore expects that Agencies will lead the way in employment policies and practices which support the release of community service personnel for emergency services duties and Defence Reservists for peacetime training and deployment.
- 4.2.3 Agencies may determine their own approach to these employment practices provided they remain consistent with the broader Government policy of support for these functions.
- 4.2.4 In acknowledgement of the Government's objectives in this area, Agencies are encouraged to promote the benefits of community service and Defence Reserve service to their employees.
- 4.2.5 The provision of unpaid leave to community service personnel for emergency services duties should encompass leave for regular training, all emergency services responses, reasonable recovery time and ceremonial duties.

Defence Reserve Support Council

- 4.2.6 The Defence Reserves Support Council (DRSC) has developed a public sector leave policy which it recommends to Australian Government employers. Specifically, the DRSC recommends that employers:
- provide four weeks (20 working days or 28 calendar days) leave on full pay each year for Reservists undertaking Defence service;
 - provide an additional two weeks paid leave to allow for a Reservists' attendance at recruit/initial employment training;
 - provide scope for additional leave for Defence service, either on a paid, unpaid or top-up pay basis;
 - not require Reservists to pay their tax-free Reserve salary to their Agency in any circumstances;
 - allow Defence leave entitlements to accumulate and be taken over a two year period;
 - treat leave for Defence service, whether with or without pay or on top-up pay, as service for all purposes – the exception being that a period or periods of leave without pay in excess of six months not count as service for annual leave purposes;
 - provide Reservists with continued access to other components of their remuneration package, e.g. Superannuation (subject to the rules of the CSS, PSS and Military Superannuation and Benefits Scheme), studies assistance, salary reviews, cars, during periods of Defence service; and
 - keep Reservists informed of developments in the workplace, e.g. Reservists absent from the workplace on Reserve Service should have the opportunity to

participate in any ballot on a proposed workplace agreement where their employment is or will be subject to the agreement.

- 4.2.7 These arrangements are consistent with the Government's commitment to supporting Reserve service. The Government therefore supports Agencies implementing arrangements along these lines through their workplace arrangements.
- 4.2.8 In recognition of the potential impact of Defence service on employers, the Australian Defence Force has undertaken to provide Agencies, whenever possible, with at least three months notice of a requirement for a Reservist to undertake Defence service. A number of Agencies also require Reservists to provide written evidence of their attendance for Defence service.
- 4.2.9 APS Agencies are eligible to receive the Employer Support Payment (ESP). The ESP Scheme provides a financial benefit to those employers who provide leave, other than normal paid leave entitlements (e.g. annual leave), to Reservists to undertake peacetime training and deployment. Under the ESP Scheme an employer is eligible to receive the ESP once a Reservist has completed 14 days continuous Reserve service in any financial year. The qualifying period can be undertaken as a single period or as multiple periods of continuous Defence Service, as long as each period of continuous Defence Service is a minimum of five consecutive days.
- 4.2.10 Further information on the ESP, including assistance in developing Reserve service promotional material, can be obtained by contacting the DRSC on 1800 803 485.

Requirements specific to APS Agencies only

4.3 *Maintaining consistency with the APS Classification Rules*

- 4.3.1 Section [23](#) of the PS Act provides for the Public Service Minister to make rules about classifications of APS employees. *The Public Service Classification Rules 2000* (the Classification Rules) allow employees and duties to be classified on the basis of work value and enable the grouping of classifications at comparable levels.
- 4.3.2 The Classification Rules are available at [DEEWR's Workplace website](#).
- 4.3.3 The Bargaining Framework requires that the classification structures contained in Agency agreements be consistent with the Classification Rules.

APS classification structure

- 4.3.4 The Classification Rules provide for APS Levels 1 to 6, Executive Levels 1 and 2, Senior Executive Bands 1, 2 and 3 and a limited number of approved Agency specific classification structures. In addition, the Classification Rules provide for associated training classifications including for trainees, cadets, graduates and apprentices.
- 4.3.5 Rule 6 of the Classification Rules requires an Agency Head to allocate an approved classification to each APS employee in the Agency. Approved classifications are only those that appear in Schedules 1 and 2 of the Classification Rules.

Broadbanding of the APS classification structure

- 4.3.6 Rule 9 of the Classification Rules allows an Agency Head to allocate more than one classification to a group of duties. This is the process of combining several classification levels into a broadband. The broadband encompasses the full range of work values and work level standards of the group of classifications from the base of the lowest to the top of the highest.
- 4.3.7 It should be noted that the broadband is allocated to the group of duties and not the individual employee. An employee can only hold one classification at any given time and each employee must hold a classification. As such, any title given to a broadband by an Agency should be regarded as a local designation and not an approved classification. Agreements should be drafted in a way that allows the Agency and employees to clearly identify, at any point in time, what approved classification each employee holds.
- 4.3.8 Agencies should ensure that as each employee moves through a particular broadband, the employee's APS classification is adjusted to remain consistent with the relevant classification for the substantive duties that the employee is performing and the employee's position in the broadband.
- 4.3.9 The three band classification framework for the SES **can not** be broadbanded.
- 4.3.10 If Agencies are considering broadbanding the non-SES APS classification structure, it is important for Agencies to look carefully at the homogeneity or commonality of functions, including supervisory needs, when developing broadbands, and to place barriers appropriately. Agencies should be mindful that it would be difficult to meet the APS Values without incorporating at least two breaks that would require open competitive selection, that is, a minimum of three broadbands.
- 4.3.11 The extent of a broadbanded structure and the location of the breaks requiring open competitive selection will depend upon the particular organisational structure of the Agency. Whilst Agency Heads have the flexibility to agree on broadbanding arrangements which best suit the needs of their Agency, they must take into account the APS Values relating to merit, community access to employment and leadership when establishing such arrangements.
- 4.3.12 To this end, Agencies with new or revised broadbanding proposals will be required to provide evidence to DEEWR and the APSC that such proposals meet the APS Values and legislative requirements in relation to merit and leadership, as part of the Bargaining Framework assessment process.
- 4.3.13 It is therefore strongly recommended that Agencies consult DEEWR for clarification on classification issues and the APSC for merit and leadership issues during the early stages of development of any proposed broadbanding to ensure consistency with the Classification Rules and the APS Values.

Agency specific classification structures

- 4.3.14 Agencies contemplating moving to an Agency specific classification structure should discuss their needs with DEEWR.

Local designations

- 4.3.15 Agency specific classification structures should not be confused with local designations. The confusion usually occurs when Agencies develop a broadbanded structure and give their broadbands a locally designated classification. For example, a broadband of APS 1 to APS 3 may be locally designated as 'Agency X Level 1'.
- 4.3.16 Agencies utilising local designations must ensure that the equivalent APS classifications are included next to references to the local designation in their enterprise agreement.

Work Level Standards

- 4.3.17 The Classification Rules require Agencies to determine Work Level Standards (WLS) for each classification being utilised in the Agency through genuine consultation with employees and their representatives. WLS specify the distinctive features of work at each level, characterising the type of duties undertaken and assessing the relative worth of jobs in terms of work value.

4.4 *Ensuring the portability of accrued paid leave entitlements*

- 4.4.1 Agreements and other workplace arrangements are to retain portability of accrued annual leave and personal/carer's leave entitlements (however described) within the APS, with future entitlements being those prevailing at the receiving Agency. Entitlements to leave will subsequently accrue at the rate applying in the receiving Agency.
- 4.4.2 The provisions of the *Parliamentary Service Act 1999* and the *Australian Capital Territory Government Service (Consequential Provisions) Act 1994* require Agencies to recognise certain leave accrued in these services. Accordingly, workplace arrangements should provide for the portability of annual and personal/carer's leave (however described) between the Parliamentary Service and the APS, and accrued annual leave between the ACT Public Service and the APS. Workplace arrangements should also provide for the portability of personal/carer's leave between the ACT Public Service and the APS as this is the basis of ongoing inter-government agreement.
- 4.4.3 The portability of leave within the APS requires receiving Agencies to act on the advice of an employee's former employing Agency in determining their accrued leave entitlement. For example, Agencies have previously used a range of terms to describe personal/carer's leave in their existing workplace arrangements and have done so for varying reasons. A receiving Agency is required to recognise leave accrued in an employee's former Agency, even if the purpose for which it was provided is not recognised in the receiving Agency's agreement. However, leave accrued from

commencement with the receiving Agency, will generally accrue in accordance with that Agency's arrangements, unless specified otherwise.

4.4.4 Certain other terms and conditions of employment set out in Commonwealth legislation and applying to the APS will continue to apply and cannot be overridden by workplace arrangements. In particular, these include long service leave, maternity leave, workers' compensation and occupational health and safety.

4.4.5 A suggested clause providing for portability of accrued leave between the Parliamentary Service and the APS, the ACT Public Service and the APS follows:

Where an employee joins the Agency on or after the commencement date from an employer staffed under the Public Service Act 1999, the Parliamentary Service Act 1999, from the ACT Government Service, accrued annual leave and personal/carers leave (however described) will be transferred, provided there is no break in continuity of service.

4.4.6 Agencies should not seek to recognise prior service with, or seek to transfer leave balances from other bodies such as State Government agencies or private sector organisations (other than for Long Service Leave purposes consistent with the *Long Service Leave (Commonwealth Authorities) Act 1976*).

4.4.7 Further information on payments related to the portability of accrued annual and long service leave entitlements is set out in the [Financial Management and Accountability Orders](#).

4.5 *Include compulsory redeployment, reduction and retrenchment provisions, without enhancing existing redundancy arrangements*

4.5.1 All enterprise agreements, determinations where relevant and common law agreements must provide for access to compulsory redeployment, reduction and retrenchment (RRR) for excess APS staff. This will ensure that Agencies maintain the capacity to resolve excess staff situations by either:

- moving the employee to a suitable job at or below their substantive classification level (with or without the employee's agreement); or
- terminating the employee's employment under [section 29](#) of the PS Act if the employee does not wish to accept voluntary retrenchment and there is no useful work for the employee to perform.

SES employees

4.5.2 Section 37 of the PS Act provides that an Agency Head may give notice in writing to an SES employee stating that the employee will become entitled to a payment of a specified amount if the employee retires within a period specified in the notice – i.e. an incentive to retire.

4.5.3 The purpose of this provision is to instigate change and effectively manage an Agency's SES workforce particularly in downsizing situations. It is likely that most situations involving excess SES employees will be managed under s.37 of the PS Act.

- 4.5.4 Chapter 6 of the Public Service Commissioner's Directions (the Commissioner's Directions) sets out the minimum requirements that must be met in relation to an Agency Head giving notice to an SES employee under s.37 of the PS Act. The Directions provide that the Commissioner must have agreed to the amount to be paid to the employee in these circumstances. A determination, common law contract or SES enterprise agreement should not bind the Commissioner to a certain level of payment for redundancy or retrenchment and as such should be silent on the quantum of the payment. The Directions also provide that an employee must be given access to independent financial advice and career counselling.
- 4.5.5 As this incentive to retire provision requires the agreement of the individual SES employee, enterprise agreements, determinations or common law agreements applying to SES employees should continue to include provisions that make it clear that the employee may be redeployed to other duties, including at a lower level, or have their employment terminated without their agreement on the grounds that they are excess to an Agency's requirements.
- 4.5.6 However, it is inappropriate for SES enterprise agreements, determinations or common law agreements to include provisions which provide a redundancy benefit or similar type of payment to persons whose employment is terminated involuntarily under s.29 of the PS Act. Similarly SES enterprise agreements, determinations or common law agreements should not include retention arrangements for excess SES employees.
- 4.5.7 Agencies should however note that Chapter 6 of the Commissioner's Directions establishes minimum requirements that Agency Heads must satisfy in relation to SES employment decisions including where it is proposed to redeploy an SES employee (either at level or to a lower classification level) or where termination of employment is proposed.
- 4.5.8 In addition, section 38 of the PS Act provides that before an Agency Head can terminate the employment of an SES employee under s.29 of the PS Act, the Commissioner must have issued a certificate stating that all the relevant requirements of the Commissioner's Directions have been satisfied in relation to the proposed termination and the Commissioner is of the opinion that the termination is in the public interest.
- 4.5.9 Where an SES employee's employment is terminated under s.29(3)(a) of the PS Act (i.e. on the ground that he/she is excess to the requirements of the agency), the employee will be entitled to an National Employment Standards (NES) redundancy payment in accordance with the *Fair Work Act 2009*.
- 4.5.10 In addition, there may be some cases where an SES employee who is retired with a special benefit under s.37 of the PS Act may also have an entitlement to redundancy benefit as set out in the NES. In these cases, the specified amount that is agreed by the Commissioner under s.37 that is to be paid to the employee will be regarded as including any entitlement the employee would have under the NES. Agency Heads should make it clear in advice to an SES employee that the incentive includes entitlements under the NES (if any).

No enhancement of existing obligations other than where required by legislation

- 4.5.11 In relation to non-SES employees, enterprise agreements and determinations, where applicable, must include compulsory redeployment, reduction and retrenchment provisions for excess APS employees. These provisions or other arrangements (i.e. a determination) which are used to supplement enterprise agreements cannot enhance the Agency's existing redundancy obligations other than where it is necessary to do so in order to comply with the minimum redundancy entitlements contained within the National Employment Standards (NES) from 1 January 2010.

Minimum entitlement under the NES

- 4.5.12 The typical APS redundancy benefit (as set out in the *APS Award 1998* and replicated in most agency agreements) is two weeks' pay per year of continuous Commonwealth service (with a pro-rata amount for completed months of service). The amount of pay varies from four to 48 weeks.
- 4.5.13 While generally more favourable than the NES, the typical APS provisions are less favourable than the NES for some employees with between two and three years' service, and three and four years' service. This means that for employees made redundant during these periods, the NES will apply instead of the APS scale. Agencies should therefore ensure that redundancy payment provisions contained within new enterprise agreements and other workplace arrangements are consistent with (but do not exceed) the NES entitlements for employees with two to three, and three to four, years' service. An increase to redundancy entitlements in order to meet NES obligations would not be considered an enhancement of existing provisions.
- 4.5.14 A suggested clause for inclusion in agency agreements is as follows:

An excess employee who agrees to be voluntarily retrenched and whose employment is terminated by the agency head under section 29 of the PS Act on the grounds that he /she is excess to the requirements of the agency is entitled to be paid redundancy pay of a sum equal to two weeks' salary for each completed year of continuous service plus a pro-rata payment for completed months of service since the last completed year of service, subject to any minimum amount the employee is entitled to under the National Employment Standards.

4.5.15 The following table outlines the key differences between the NES entitlement and the typical APS provisions as described above:

Length of service	NES Redundancy	Typical APS Redundancy
Less than 1 year	Nil	4 weeks
At least 1 year but less than 2 years	4 weeks	4 weeks
At least 2 years but less than 3 years	6 weeks	4 weeks + pro rata for completed months of service
At least 3 years but less than 4 years	7 weeks	6 weeks + pro rata
At least 4 years but less than 5 years	8 weeks	8 weeks + pro rata
At least 5 years but less than 6 years	10 weeks	10 weeks + pro rata
At least 6 years but less than 7 years	11 weeks	12 weeks + pro rata
At least 7 years but less than 8 years	13 weeks	14 weeks + pro rata
At least 8 years but less than 9 years	14 weeks	16 weeks + pro rata
At least 9 years but less than 10 years	16 weeks	18 weeks + pro rata
At least 10 years but less than 11 years	12 weeks	20 weeks + pro rata
11 years or more	12 weeks	22 weeks up to a max of 48 wks

Retention Periods

4.5.16 From 1 January 2010, the operation of the FW Act and the NES will have the effect of imposing an additional redundancy entitlement at the end of any retention period. This will effectively mean that an excess employee would receive a double entitlement, rather than retention acting as an alternative to a redundancy payment.

4.5.17 To this end, where agencies decide to provide retention periods, new APS Agreements are to include terms which provide excess employees with a choice to:

- i. take the APS voluntary redundancy entitlement (i.e. the 2 weeks pay per year of service with a minimum of 4 weeks and a maximum of 48 weeks pay, adjusted where necessary to take account of any minimum entitlement under the NES); or
- ii. elect for a retention period; the duration of which is reduced by an amount equivalent to the NES redundancy entitlement. For example, an employee who would otherwise be eligible for a retention period of seven months and a NES redundancy payment equivalent to twelve weeks' salary should be offered a retention period of seven months minus twelve weeks.
 - In cases where an agency's agreement includes a provision which allows an excess employee's employment to be terminated prior to the expiry of the retention period, with the balance of the period paid as a lump sum, any such payment should also be reduced by an amount equivalent to the employee's entitlement to redundancy pay under the NES.

4.5.18 The term 'existing redundancy arrangements' for the purposes of the no enhancement requirement should be interpreted as follows:

- for existing APS Agencies that have an enterprise agreement in place, (or are covered by a determination made under s.24 (1) or s.24(3) of the PS Act as a result of a machinery of government change which sets out the RRR arrangements for the Agency or preserves RRR arrangements that applied before the machinery of government change), the assessment of a new enterprise agreement should be made against the provisions set out in the

existing enterprise agreement, s.24(1) determination or those preserved by the s24(3) determination;

- for newly established APS Agencies that do not have an enterprise agreement in place and are not covered by a determination made under s.24(1) or s.24(3) of the PS Act, the assessment of a new enterprise agreement should be made against the redundancy pay and notice of termination provisions set out in the APS Award, with the following additional provisions able to be included:
 - for employees who do not accept an offer of voluntary retrenchment access to a retention period of up to 13 months for excess employees with 20 or more years of service or those who are over 45 years of age, and up to 7 months for all other excess employees, commencing when the employee is advised that they are excess, or one month after an offer of voluntary retrenchment is made, whichever is the earlier (subject to reductions in the length of period to offset redundancy entitlements under the NES as described above). These retention periods may be extended by periods of certificated sick leave taken during the actual retention period;
 - Agencies need to make it clear that an excess employee is eligible to receive only one offer of voluntary retrenchment during any redundancy process;
 - a discussion period (also referred to as a consultation period) of up to four weeks and a consideration period of up to four weeks;
 - financial advice and/or career counselling up to a specified dollar amount (on provision of receipts that services have been provided);
 - assistance with redeployment and/or referral to a provider of redeployment services where the excess employee elects the retention option; and
 - in circumstances where an Agency involuntarily reduces an excess employee to a lower classification level, provision for salary maintenance at the person's former level for the balance of the employee's retention period.
- for Agencies or parts of Agencies that are outside the APS and are moved under PS Act coverage as a result of a machinery of government change, the assessment of a new enterprise agreement should be made against the redundancy pay and notice of termination provisions set out in the APS Award. In addition, the additional measures identified above may be included, provided that they are not greater than the benefits that already apply in the Agency (or part of the Agency) as set out in the Agency's current enterprise agreement.

Flexibilities for Redeployment, Reduction and Retrenchment arrangements

- 4.5.19 Agencies are able to adapt their redundancy provisions to meet their specific needs, subject to the test of no enhancement of existing arrangements and the requirements described above.
- 4.5.20 The APS Commission is able to provide further advice to Agencies on these issues.

Redeployment principles and the Career Transition and Support Centre

- 4.5.21 The APS Commission has developed a set of [redeployment principles](#) to provide a consistent framework for the management of excess staff across the APS.
- 4.5.22 In addition, agencies are encouraged to utilise the services of the [Career Transition and Support Centre](#) within the APS Commission, which can assist with the redeployment of excess and potentially excess staff and to provide advice to agencies on redeployment and recruitment matters.

Statutory obligations and termination of employment

- 4.5.23 Agencies need to be aware that an enterprise agreement, determination or common law agreement cannot override statutory obligations or remedies relating to termination of employment under the Fair Work Act or the PS Act.

Legal advice

At various stages during the agreement making process, Agencies may wish to seek legal advice on various aspects of related legislation.

The Attorney-General has directed that Agencies consult with the Agency responsible for the relevant legislation by providing a reasonable opportunity to provide advice on the relevant matter prior to seeking formal legal advice. Agencies should also provide a copy of the request for advice and the advice to the administering Agency.

Accordingly, Agencies requiring legal advice on provisions in the Fair Work Act should contact their DEEWR Client Contact Team in the first instance.

It is important that DEEWR be kept fully informed of legal advice that impacts on the interpretation of the Fair Work Act. Agencies are therefore reminded that, under clause 10 of the Legal Services Directions, copies of such legal advice should be provided to DEEWR.

Copies should be sent to:

Chief Counsel
Workplace Relations Legal Group
Department of Education, Employment and Workplace Relations
GPO Box 9880
CANBERRA ACT 2601

Similarly, for any legal advice related to the operation of the *Public Service Act 1999*, Agencies should consult with the APSC and provide copies of any legal advice to:

Legal Adviser
Australian Public Service Commission
16 Furzer St
WODEN ACT 2606

For further information consult the Attorney-General's Department's Legal Services Directions.

Further Advice and Information

DEEWR Client Contact Teams

DEEWR provides support and advice to Agencies on the Government's workplace relations policies in order to promote effective agreement making across the APS. DEEWR's Client Contact Teams have been established for all Portfolios.

Your team can provide up-to-date advice and information in relation to agreement making and other workplace relations issues.

Further information about DEEWR's role, services it provides, and publications, along with updates to this policy document can be obtained from www.workplace.gov.au or by emailing agebf@deewr.gov.au

The Australian Public Service Commission

The APSC can provide advice and guidance to Agencies on those policy areas for which it is responsible. The APSC has responsibility for:

- supporting the Public Service Minister on the administration of the *Public Service Act 1999* (PS Act), including the APS Values, and subordinate legislation. The APSC can provide advice to Agencies on request on all matters covered by the PS Act except for remuneration and other conditions (section 24) and the classification rules; and
- in particular, the APSC has policy responsibility for redeployment, reduction and retrenchment arrangements, and will provide advice to APS Agencies on Bargaining Framework issues in relation to these matters.

Further information is available from the APSC's Adviceline by phone on 02 6202 3859 or email employmentadvice@apsc.gov.au. It would be appreciated if complex or sensitive queries are submitted by e-mail.

Fair Work Australia and the Fair Work Ombudsman

Under the Fair Work Act, Fair Work Australia performs a number of functions relevant to agreement making. These functions include approving enterprise agreements, ensuring that bargaining is conducted in good faith, overseeing right of entry and industrial action, dealing with disputes, and providing assistance and advice about its functions and activities. Further assistance is available from Fair Work Australia via its website (www.fwa.gov.au) or by calling 1300 799 675.

The Fair Work Ombudsman is responsible for monitoring compliance and investigating breaches of the Fair Work Act and fair work instruments, and providing education, assistance and advice to employees, employers and organisations on the application of legislation and other general workplace relations enquiries. Further assistance is available from the Fair Work Ombudsman via its website (www.fwo.gov.au) or by calling 13 13 94.

Definitions

‘AAWI’

Average Annualised Wage Increase. A calculation of the total wage increase applicable over the life of the agreement, averaged over the agreement’s duration in years. For example, an agreement of 24 months duration with wage increases of 3.0 per cent on commencement and 2.5 per cent at the beginning of the second year would have an AAWI of 2.75 per cent.

‘Agency Heads’

Except where another intent is clear, all APS Agency Heads and Heads or Chief Executive Officers of other organisations to the extent that the Bargaining Framework applies.

‘APS Agencies’ or ‘Agencies’

Agencies which employ staff under the *Public Service Act 1999*. Where applicable, generic references to Agencies should be taken to include any non-APS Commonwealth Authorities who are subject to the Bargaining Framework.

‘APSC’

The Australian Public Service Commission.

‘Bargaining Framework’

The ‘Australian Government Employment Bargaining Framework’, as agreed by Cabinet and amended from time to time.

‘Collective arrangement’

An enterprise agreement or a determination under the PS Act or other employing legislation applying to more than one employee.

‘DEEWR’

The Department of Education, Employment and Workplace Relations.

‘Determination’

A determination made under section 24(1) of the *Public Service Act 1999* or other relevant employing legislation.

‘Enterprise agreement’

An enterprise agreement made under the Fair Work Act.

‘Fair Work Act’

The *Fair Work Act 2009*.

‘Fair Work Regulations’

The *Fair Work Regulations 2009*

‘Finance’

The Department of Finance and Deregulation.

‘MoPS’

Members of Parliament (Staff) – Persons employed under the *Members of Parliament (Staff) Act 1984*.

‘Non-APS Commonwealth Authorities’ or ‘Authorities’

Commonwealth bodies which employ staff under legislation other than the *Public Service Act 1999*, such as Agency-specific legislation.

‘PS Act’

The *Public Service Act 1999*.

‘SES’

Senior Executive Service.

‘Workplace arrangement’

Enterprise agreements, other workplace agreements, common law arrangements, determinations issued under the employing legislation and workplace policies and practices.

Attachment A – Principles for workplace delegates

The role of union workplace delegates is to be respected and facilitated.

Agencies and workplace delegates must deal with each other in good faith.

The rights of union workplace delegates and recognised representatives include but are not limited to:

- the right to be treated fairly and to perform their role as workplace delegates without any discrimination in their employment;
- recognition by the agency that endorsed workplace delegates speak on behalf of their members in the workplace;
- the right to participate in collective bargaining on behalf of those who they represent, as per the Fair Work Act;
- the right to reasonable paid time to provide information to and seek feedback from employees in the workplace;
- reasonable paid time off to represent union members in the agency at relevant union forums;
- reasonable access to agency facilities for the purpose of carrying out work as a delegate and consulting with workplace colleagues and the union, subject to agency policies and protocols;
- reasonable paid time during normal working hours to consult with colleagues in the workplace;
- reasonable access to appropriate training in workplace relations matters including training provided by a union;
- the right to consultation, and access to relevant information about the workplace and the agency; and
- the right to reasonable paid time to represent the interests of members to the employer and industrial tribunals.

Agencies will seek to facilitate official union communication with employees by means that may include:

- the use of email as a means of communicating with employees and other means of information sharing, including written materials, electronic billboards and access to websites; and
- group or individual meetings between employees and their representatives.

In exercising their rights, workplace delegates and unions will consider operational issues, departmental policies and guidelines and the likely affect on the efficient operation of the agency and the provision of services by the Commonwealth.

Attachment B – Notice of employee representational rights

(Fair Work Regulations 2009, regulation 2.05 – current as at 1 July 2009)

Fair Work Act 2009, subsection 174 (6)

[Name of employer] gives notice that it is bargaining in relation to an enterprise agreement ([name of the proposed enterprise agreement]) which is proposed to cover employees that [proposed coverage].

What is an enterprise agreement?

An enterprise agreement is an agreement between an employer and its employees that will be covered by the agreement that sets the wages and conditions of those employees for a period of up to 4 years. To come into operation, the agreement must be supported by a majority of the employees who cast a vote to approve the agreement and it must be approved by an independent authority, Fair Work Australia.

If you are an employee who would be covered by the proposed agreement:

You have the right to appoint a bargaining representative to represent you in bargaining for the agreement or in a matter before Fair Work Australia about bargaining for the agreement.

You can do this by notifying the person in writing that you appoint that person as your bargaining representative. You can also appoint yourself as a bargaining representative. In either case you must give a copy of the appointment to your employer.

[If the agreement is not an agreement for which a low-paid authorisation applies — include:]

If you are a member of a union that is entitled to represent your industrial interests in relation to the work to be performed under the agreement, your union will be your bargaining representative for the agreement unless you appoint another person as your representative or you revoke the union's status as your representative.

[If a low-paid authorisation applies to the agreement — include:]

Fair Work Australia has granted a low-paid bargaining authorisation in relation to this agreement. This means the union that applied for the authorisation will be your bargaining representative for the agreement unless you appoint another person as your representative, or you revoke the union's status as your representative, or you are a member of another union that also applied for the authorisation.

[if the employee is covered by an individual agreement-based transitional instrument — include:]

If you are an employee covered by an individual agreement:

If you are currently covered by an Australian Workplace Agreement (AWA), individual transitional employment agreement (ITEA) or a preserved individual State agreement, you may appoint a bargaining representative for the enterprise agreement if:

- the nominal expiry date of your existing agreement has passed; or
- a conditional termination of your existing agreement has been made (this is an agreement made between you and your employer providing that if the enterprise agreement is approved, it will apply to you and your individual agreement will terminate).

Questions?

If you have any questions about this notice or about enterprise bargaining, please speak to either your employer, bargaining representative, go to www.fairwork.gov.au, or contact the Fair Work Australia Infoline on 1300 799 675.

Attachment C – Model consultation term

(Fair Work Regulations 2009, regulation 2.09 – current as at 1 July 2009)

- (1) This term applies if:
 - (a) the employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and
 - (b) the change is likely to have a significant effect on employees of the enterprise.
- (2) The employer must notify the relevant employees of the decision to introduce the major change.
- (3) The relevant employees may appoint a representative for the purposes of the procedures in this term.
- (4) If:
 - (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (b) the employee or employees advise the employer of the identity of the representative;
the employer must recognise the representative.
- (5) As soon as practicable after making its decision, the employer must:
 - (a) discuss with the relevant employees:
 - (i) the introduction of the change; and
 - (ii) the effect the change is likely to have on the employees; and
 - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
 - (b) for the purposes of the discussion — provide, in writing, to the relevant employees:
 - (i) all relevant information about the change including the nature of the change proposed; and
 - (ii) information about the expected effects of the change on the employees; and
 - (iii) any other matters likely to affect the employees.
- (6) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- (7) The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- (8) If a term in the enterprise agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in subclauses (2), (3) and (5) are taken not to apply.

(9) In this term, a major change is *likely to have a significant effect on employees* if it results in:

- (a) the termination of the employment of employees; or
- (b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
- (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- (d) the alteration of hours of work; or
- (e) the need to retrain employees; or
- (f) the need to relocate employees to another workplace; or
- (g) the restructuring of jobs.

(10) In this term, *relevant employees* means the employees who may be affected by the major change.

Attachment D – Model flexibility term

(Fair Work Regulations 2009, regulation 2.08 – current as at 1 July 2009)

- (1) An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
- (a) the agreement deals with 1 or more of the following matters:
 - (i) arrangements about when work is performed;
 - (ii) overtime rates;
 - (iii) penalty rates;
 - (iv) allowances;
 - (v) leave loading; and
 - (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
 - (c) the arrangement is genuinely agreed to by the employer and employee.
- (2) The employer must ensure that the terms of the individual flexibility arrangement:
- (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
 - (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
 - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- (3) The employer must ensure that the individual flexibility arrangement:
- (a) is in writing; and
 - (b) includes the name of the employer and employee; and
 - (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - (d) includes details of:
 - (i) the terms of the enterprise agreement that will be varied by the arrangement; and
 - (ii) how the arrangement will vary the effect of the terms; and
 - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - (e) states the day on which the arrangement commences.
- (4) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (5) The employer or employee may terminate the individual flexibility arrangement:
- (a) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (b) if the employer and employee agree in writing — at any time.

Attachment E – Model dispute resolution term

(Fair Work Regulations 2009, regulation 6.01 – current as at 1 July 2009)

(1) If a dispute relates to:

- (a) a matter arising under the agreement; or
- (b) the National Employment Standards;

this term sets out procedures to settle the dispute.

(2) An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.

(3) In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.

(4) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Australia.

(5) Fair Work Australia may deal with the dispute in 2 stages:

(a) Fair Work Australia will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and

(b) if Fair Work Australia is unable to resolve the dispute at the first stage, Fair Work Australia may then:

- (i) arbitrate the dispute; and
- (ii) make a determination that is binding on the parties.

Note If Fair Work Australia arbitrates the dispute, it may also use the powers that are available to it under the Act.

A decision that Fair Work Australia makes when arbitrating a dispute is a decision for the purpose of Div 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.

(6) While the parties are trying to resolve the dispute using the procedures in this term:

(a) an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and

(b) an employee must comply with a direction given by the employer to perform other available work at the same workplace, or at another workplace, unless:

- (i) the work is not safe; or
- (ii) applicable occupational health and safety legislation would not permit the work to be performed; or
- (iii) the work is not appropriate for the employee to perform; or
- (iv) there are other reasonable grounds for the employee to refuse to comply with the direction.

(7) The parties to the dispute agree to be bound by a decision made by Fair Work Australia in accordance with this term.

Attachment F - Remuneration and Funding Declaration

I insert Agency Head name certify that having taken account of:

1. our existing financial position, including out-year appropriations and known efficiency dividends;
2. known operational requirements for the foreseeable future; and
3. expected increases in pay and conditions to be provided to insert Agency name staff employed under the proposed arrangement, including consequential effects such as increases to outstanding leave liabilities and superannuation entitlements; and
4. the potential cost of individual flexibility agreements, including consequential effects such as increases to outstanding leave liabilities and superannuation entitlements

that all additional costs arising from the insert name of Agency collective Workplace Arrangement can be funded from within the insert Agency name budget for the life of the arrangement.

Further, I certify that the improvements in terms and conditions contained within the proposed arrangement will be offset over the life of that arrangement by genuine and quantifiable productivity initiatives.

[Where additional requirements under Part 3.1 apply – include:

I certify that the improvements in terms and conditions contained within the proposed arrangement are not, and will not be, funded through the use of insert Agency name program funding].

Signature: _____

Name: _____

Position: _____

Date: _____